

**MINUTES
HEARING OFFICER
SEPTEMBER 15, 2015**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

STUDY SESSION 4:30 PM

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Dean Miller, Planner
Diane McGuire, Administrative Assistant II
Julie Scofield, Code Compliance Inspector

Number of Interested Citizens Present: 10

- Staff and the Hearing Officer discussed overview and updates to the scheduled cases for this hearing.

REGULAR SESSION 5:00 PM

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Dean Miller, Planner
Diane McGuire, Administrative Assistant II
Julie Scofield, Code Compliance Inspector

Number of Interested Citizens Present: 20

Meeting convened at 5:00 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by September 29, 2015 at 3:00 PM, to the Community Development Department.

Ms. MacDonald noted that the following item had been removed from today's agenda:

- **Agenda Item No. 3**
Request approval to abate public nuisance items at the **BOECKMAN PROPERTY (CE153569)** located at 425 East Hermosa Drive. The applicant is the City of Tempe.
ABATEMENT REQUEST WITHDRAWN – PROPERTY IN COMPLIANCE
- **Agenda Item No. 8**
Request approval for a use permit to allow RV parking to be located in the front yard setback for the **BRINER RESIDENCE (PL150311)** located at 3525 South Poplar Street. The applicant is Donald Briner.
CASE CONTINUED TO OCTOBER 6, 2015 HEARING OFFICER
- **Agenda Item No. 11**
Request approval for two (2) use permit standards to reduce the north and south side yard setbacks by 20% for a home addition for the **CARLSON RESIDENCE (PL150204)** located at 7918 South Ash Avenue. The applicant is Kevin Fulkerson/Cornerstone Design.
CASE CONTINUED TO OCTOBER 6, 2015 HEARING OFFICER

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1. Vanessa MacDonald noted that the Hearing Officer Minutes for September 1, 2015 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the **LOPIANO PROPERTY (CE152969)** located at 101 East Geneva Drive. The applicant is the City of Tempe.

Julie Scofield, Code Inspector, gave an overview of this case. She noted that notices had been sent that there was an unregistered vehicle as well as junk and debris (i.e. camper shell, wood, junk and miscellaneous items in the front and sides of the property) at this address. The tenant had been issued a civil citation and failed to appear in court. Julie confirmed that no response had been received from the property owner to date.

DECISION:

Ms. MacDonald approved the abatement for CE152969.

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3. Request approval for a use permit to allow parking in the front yard setback for the **DEMATTEI RESIDENCE (PL150323)** located at 1953 East Dunbar Drive. The applicant is David Ross/Ross Design Group LLC.

Sherri Lesser, Senior Planner, explained that the applicant is requesting a use permit to allow the required parking in the front yard setback so that the carport can be converted into livable space. The house was constructed in 1971 and has a smaller floor plan than newer homes. The site is located north of Baseline and east of McClintock Drive. A double car driveway is available within the front yard setback to accommodate parking. Staff received two (2) telephone inquiries expressing concern that this request implied lawn parking; once the issue was clarified (i.e. no lawn parking) they had no further concerns. Ms. Lesser presented floor plan(s), elevation drawing(s), as well as photographs of the current residence.

David Ross of Ross Design Group LLC was present to represent this case. Monica and Mathew Demattei were also in attendance. They acknowledged their understanding of the assigned Conditions of Approval.

Leonard Sedlack, Tempe citizen, questioned the manner of parking that would be approved, stating that he wanted to make sure it would not turn into a 'parking lot'. The parking issue was clarified by Mr. Ross who explained that the parking would occur within the driveway area and was not 'lawn parking'. Mr. Sedlack acknowledged his understanding and acceptance of that situation.

Ms. MacDonald noted that this request meets the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- There are no known nuisances arising from this use that would exceed the ambient conditions.
- The proposed use is not in conflict with the General Plan or the surrounding neighborhood and would not contribute to the deterioration of the neighborhood or downgrading of property values.
- The use is compatible with the existing structure and surrounding uses.
- The applicant is not proposing a use that would create a nuisance or create disruptive behavior.

DECISION:

Ms. MacDonald approved the use permit request for PL150323 subject to the following conditions:

1. All parking on site shall take place on paved driveway surface only.
2. Any on street parking of vehicles for residents or guest to comply with limitations of City Code Chapter 19 – Motor Vehicles and Traffic.
3. All vehicles parked on the premises must be actively registered and in operable condition at all times.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing set to re-evaluate the appropriateness of the use permit. *In the event that the use permit is revoked per the process outlined in the Zoning and Development Code; the required parking shall be provided behind the front yard setback with the potential to convert livable space back to a carport or garage.*
5. Obtain all necessary building clearances for the carport enclosure.

4. Request approval for a use permit standard to reduce the west side yard setback to the minimum setback standard required in the R1-7 District and a use permit standard to reduce the west side yard setback by 20% for the installation of an accessory building for the **JACOBSEN RESIDENCE (PL150330)** located at 1324 East Divot Drive. The applicant is John Jacobsen.

Dean Miller, Planner, gave an overview of this case. He noted that the applicant is applying for two (2) use permit standards to allow two (2) side yard setback reductions to allow a 15 ft. tall accessory building measuring 28 ft. wide and 41 ft. deep along the west property line. The request includes a use permit standard to reduce the required west side yard setback to the standard setback of 7 ft.; and an additional use permit standard to reduce the 7 ft. setback by 20% to 5 ½ ft. The combination of both use permit standards would allow the building to be 5 ½ ft. from the side property line. The applicant has indicated that he needs to move closer to the property line to accommodate the backing of a recreational vehicle along the side of his house into the building.

To date, staff has received opposition from the property owner to the west (Debbie Tribioli) who is adamantly opposed to the structure. Staff is not supporting this request.

Mr. John Jacobsen was present to represent this case. He acknowledged the proposed Conditions of Approval and receipt of the Staff Summary Report for this case.

Ms. MacDonald noted that the proposed structure was a very large building and questioned why such a large building was being proposed.

Mr. Jacobsen stated that his intent was to see what would be allowed to be built and then determine what he can afford. He indicated that the actual building would probably be a smaller structure. He stated that his other option is to park an RV alongside and directly against the property line block wall. He said that the size of the building was based on the fact that the RV would be parked inside and that he needed a place to store his tools, belongings and to work on various hobbies. He noted that his position is that his neighbor either has the choice of looking at a garage structure, constructed and painted to match the house, that is 5 ½ feet off the wall, or an RV of approximately the same size parked 2 ft. off the same wall.

Ms. MacDonald noted that this is a large property with no swimming pool or other structure. She asked staff what was the difference between variances and use permit standards as it could be that some individuals may apply for use permit standards to avoid the stipulations imposed by variances. Dean Miller clarified the requirements and explained that the applicant has the right to apply for the use permit standards.

Ms. MacDonald questioned staff if the plan check process (prior to actual building construction) would cover any changes to the initial plans submittal. Dean Miller, Planner, responded that it could.

Ms. MacDonald stated that the proposed structure does not appear to be very compatible with the neighboring properties.

Ms. Debbie Triboli spoke in opposition to this request. She explained that she lives adjacent to Mr. Jacobsen's property to the west and that the proposed large structure would directly impact her enjoyment of her property as well as negatively affect her property values. Mr. Jacobsen is planning on building a structure that is larger than her house, she said, and has informed her that if he does not receive approval for the structure he will erect exterior renovations and park the RV alongside the block wall, effectively affecting her property either way.

Ms. Triboli presented photographs depicting the view from inside her home and from her back yard that highlighted the area, as well as her bedroom area, where Mr. Jacobsen wishes to place his garage structure. She noted that approval of his request will affect her property and present view of the area.

Mr. Jacobsen returned to the podium and stated that while the City of Tempe likes to take into account the views of other citizens regarding proposed requests, the reality is that this is his property and he should be able to do what he wants with it.

Ms. MacDonald acknowledged that although it is his property, she looks at the larger picture. She stated that the structure is massive and out of character for the neighborhood. She explained that Mr. Jacobsen does have the option to appeal her decision to the DRC within the specified time frame for appeals of today's cases.

Ms. MacDonald noted that this request does not meet the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- There are no known nuisances arising from this use that would exceed the ambient conditions of the neighborhood. *These factors are unknown and will be based on the use of the structure once it is constructed. The proximity to the adjacent property owner's back yard could be a nuisance factor for these emissions.*
- The proposed use is not in conflict with the General Plan or the surrounding neighborhood. *The proposed use may have an impact on the adjacent property value as it would obstruct the view from the adjacent home to the northeast.*
- The use is compatible with the existing structure and surrounding uses. *The proposed building would be designed to match the existing residence in architecture and color, however, it is out of scale for an accessory building. It is proposed to be 1148 s.f. or 839 s.f. less than the primary structure.*
- The applicant is not proposing a use that would create a nuisance or create disruptive behavior. *There are no indications that the garage would create disruptive behavior.*

DECISION:

Ms. MacDonald denied the two (2) use permit standards for PL150330.

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5. Request approval for a use permit to allow a massage establishment for **K MASSAGE (PL150335)** located at 1853 East Baseline Road. The applicant is Anthony Lawlor.

Dean Miller, Planner, gave an overview of this case, noting that the applicant is seeking a use permit to allow massage therapy within a multi-tenant building situated between two buildings, one containing a restaurant and one containing a restaurant and bar. The commercial center, known as Baseline Village, is located on Baseline Road, east of McClintock Drive. Immediately east of this site is a multi-family condominium complex (Ville Monaco). Immediately south of this property is a single family housing development (Tempe Royal Palms). The suite is located near the center of the building and is not visible from the street. Staff has not received any public input on this request, however the Tempe Police Department, Crime Prevention staff has expressed concern over the location, hours and floor plan.

Mr. Lawlor was present to represent this case. As he did not appear to be familiar with the proposed Conditions of Approval included in the Staff Summary Report for his case, the Conditions were read aloud and reviewed with him. Ms. MacDonald explained that the operation of his business was contingent on adherence to these Conditions of Approval. Mr. Lawlor acknowledged his understanding of the assigned Conditions of Approval.

Condition of Approval No. 11 was discussed with Mr. Lawlor and Dean Miller explained that this parking information would be used to update the parking file on this center to determine if adequate parking is available for businesses within that location. Mr. Miller noted that the parking data can be obtained from the property owner and that it is their responsibility that adequate parking is available.

Ms. MacDonald noted that this request meets the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- There are no known nuisances arising from this use that would exceed the ambient conditions of the commercial center.
- The proposed use is not in conflict with the General Plan or the surrounding neighborhood.
- The use is compatible with the existing structure and surrounding uses.
- The applicant is not proposing a use that would create a nuisance or create disruptive behavior.

DECISION:

Ms. MacDonald approved the use permit for PL150335 subject to the following conditions:

1. The use permit is valid only after a building permit has been obtained and the required inspections have been completed and a final inspection has been passed.
2. The use permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during the building plan check process.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit, which may result in termination of the use permit.
4. Any intensification or expansion of use shall require a new use permit.
5. Return to the Hearing Officer for review of compliance with conditions of approval within six (6) months. The timing for the six month review period to commence begins when the business is in full operation. Advise Community Development staff when in full business operation. If the full business activity is not initiated within one year the use permit will lapse.
6. Hours of operation to end no later than 10 PM on a daily basis.
7. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review. Provide adequate lighting at the rear and front of the building.

8. Replace all dead or missing trees along the east and south landscape area along with any other missing landscape material within the subject property perimeter.
9. All rear exit doors require a clear vision panel. Details to be approved through Building Safety Plan Review.
10. Customers shall enter and exit the business from the main entry door. The rear doors shall not be for customer use.
11. Update the data for the parking file for this building prior to the use permit becoming effective. Provide information within 14 days (by October 6, 2015).

6. Request approval for a use permit standard to reduce the front yard setback by 20% for an enclosed garage for the **HILL RESIDENCE (PL150340)** located at 9320 South Lakeshore Drive. The applicant is Terry Roach.

Steve Abrahamson, Principal Planner, reviewed this case, stating that the site is along the western border of the Corona Del Sol Estates Subdivision (west of McClintock Drive) and is zoned R1-15, Single Family Residential. The applicant proposes to construct an addition along the south side of the existing home. The home will be modified with a new enclosed 3 car garage. The addition measures 31 ft. 6 in. in width; 24 ft. in length; and 11 ft. in height. The applicant is requesting a use permit standard to reduce the front yard setback by 20% from 35 ft. to 28 ft. as a portion of the addition will encroach into the front yard setback. No public input has been received on this request. Mr. Abrahamson stated that staff is supporting this request.

Mr. Terry Roach was present to represent this case. He acknowledged his understanding of the assigned Conditions of Approval.

Ms. MacDonald noted that the curving street on which this home is located makes the lot irregular.

Ms. MacDonald noted that this request meets the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- There are no known nuisances arising from this use that would exceed the ambient conditions of the neighborhood.
- The proposed use is not in conflict with the General Plan or the surrounding neighborhood and will not contribute to the deterioration of the neighborhood or downgrading of property values. The addition will serve as an investment to the property.
- The use is compatible with the existing structure and surrounding uses. The addition will be visible from the street front but will be constructed to be compatible with the existing house and surrounding neighborhood.
- The applicant is not proposing a use that would create a nuisance or create disruptive behavior.

DECISION:

Ms. MacDonald approved the use permit standard for PL150340 subject to the following conditions:

1. The use permit standard is valid only after a building permit has been obtained and the required inspections have been completed and a final inspection has been passed. As part of the building permit process, on-site storm water retention may be required to be verified or accomplished on this site.
2. The use permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. Any intensification or expansion of this use shall require a new use permit.

7. Request approval for a use permit to allow a tobacco retailer for **OASIS VAPE (PL150298)** located at 7520 South Rural Road, Suite A-4. The applicant is Gianni Martinez.

Steve Abrahamson, Principal Planner, gave an overview of the case. He noted that the site is located within the PCC-1, Planned Commercial Center Neighborhood District, within the Fiesta Plaza on the northwest corner of Elliot Road and Rural Road. Staff has received substantial opposition to this request from the surrounding community concerned about the location of this business next to the existing child care center. ZDC identifies the separation from schools as elementary and high schools only. The proposed business is for a retail store which sells e-cigarette products. Other uses within the center include a nail salon, water and ice store, Dairy Queen and Valero Gas, as well as Alegrias Child Care. The applicant held an open house on Friday September 11th from 6 to 8 PM. Staff is not supporting this request, Mr. Abrahamson stated, particularly because it does not fall within the Character Area Plan created for the Corona/South Tempe Character Area, and does not add to the desirability of the neighborhood. There has been overwhelming opposition to this request from the neighbors in the vicinity.

Mr. Martinez was present to represent this case. Mr. Martinez stated that he was not aware that a use permit would be necessary for this type of business. He acknowledged the opposition of the neighborhood to his request and the close proximity to the day care center. He stated that they have several procedures in place for this business, including ID scanners, to prevent minors from using the products and that patrons do not stand outside and smoke.

Mr. Douglas Rolan spoke in opposition to this request and explained that every business within this center, without exception is a family oriented business, in keeping with the Character Area Plan. This proposed business is not a good fit for the neighborhood and no one wants that business to be located there.

Mr. Martinez returned to the podium and stated that he understood the opposition and acknowledged that the neighbors are absolutely right that his is not a family business in any way, shape or form. However, he noted that they are not open all hours of the night but only from 11AM to 7 PM. He stated that he did not feel that this business would create a nuisance to the area.

Ms. MacDonald noted that this request meets the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic. *The proposed use has hours and operation similar to other retail uses within the center. The hours of operation are from 11 AM to 7 PM to start. This suite only requires 3 parking spaces and is part of a large established retail center.*
- There are no known nuisances arising from this use that would exceed the ambient conditions of the commercial center. *The product produces a vapor that is somewhat odorless; customers are allowed to try the product on site although it is intended to be sold for personal consumption off site.*
- The proposed use is not in conflict with the General Plan or the surrounding neighborhood. *The Character Area Plan created for the Corona/South Tempe Character Area has a defining priority to encourage businesses that are neighborhood friendly and provide services and goods for families. This use is typically exclusive for adults and does not fit the character for this area.*
- The use is compatible with the existing structure and surrounding uses. *The use adjacent to the child care center is not compatible. Ms. MacDonald noted that although ZDC separation requirements requires a separation of 1,320 ft. from the property line to any school with elementary or second education, the intent of that stipulation includes the proximity of the Day Care Center.*
- The applicant is not proposing a use that would create a nuisance or create disruptive behavior. *There is not enough history on these types of businesses to evaluate the level of nuisance to the surrounding area. The speculation is that there would be little or none.*

DECISION:

Ms. MacDonald denied the use permit for PL150298.

8. Request approval for two (2) variances to reduce the street side yard setback and the off street parking requirements (reducing the on-site driveway length) for **1647 EAST BROADMOR DRIVE (PL150287)** located at 1647 East Broadmor Drive. The applicant is Manjula Vaz/Gammage & Burnham PLC.

Sherri Lesser, Senior Planner, gave a brief overview of the case noting that the applicant is seeking approval of 2 variances to reduce the side yard setback for a building/garage structure and to reduce the length of the on-site driveway bringing the parking closer to the street. The driveway length will be 5 ft. behind the property line and 8 ft. behind the sidewalk; the existing carport is currently located this distance from the sidewalk. The new garage will be placed at the same setbacks as the existing perimeter fence. The addition will be used as additional off street parking for the residence and storage. The future garage opening alignment will replace an existing RV gate providing vehicular access to the backyard. The applicant held a neighborhood meeting on July 31, 2015 and 3 neighbors attended that meeting. Staff has received phone calls and 3 letters of support from the surrounding property owners.

Mr. Tim Forsman of Gammage & Burnham PLC was present to represent this case. He acknowledged the applicant's understanding of the assigned Conditions of Approval.

Ms. MacDonald acknowledged that the variances are appropriate at this location due to the expansive right-o-ways on both frontages.

Ms. MacDonald noted that this request meets the requirements for a variance:

- Special circumstances are applicable to the property. *The property is located on a corner with parking to the rear street side of the house due to the expansive right-of-ways on both frontages; there is limited opportunity to build an accessible garage without deviation from the requirements for building and driveway setback. There will be minimal impact to neighbors visually due to the mature landscaping and existing wall surrounding the property.*
- Strict application of the Code will deprive the property owner of privileges enjoyed by other properties of the same classification in the same zoning district. *There are other freestanding structures encroaching within the side yard setback within the neighborhood. At least 4 similar variances have been granted for similar properties in size within the R1-6 zoning district.*
- The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located. *Shall not be considered a special privilege inconsistent with other R1-6 zoned properties.*
- A variance may not be granted if special circumstances are self-imposed by the property owner. *The layout of the main dwelling on the lot with 2 right-of-way frontages and an alley limits placement of the garage and are considered special circumstances not self-imposed.*

DECISION:

Ms. MacDonald approved the two (2) variances for PL150287 subject to the following conditions:

1. The variances are valid for the plans as submitted within this application.
 2. The variances are valid only after a building permit has been obtained and the required inspections have been completed and a final inspection has been passed.
 3. The variances are for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process. The setback may not be reduced further without seeking another variance.
 4. The materials and colors of the addition shall match or be compatible with the existing structure.
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ANNOUNCEMENTS

- Mr. Abrahamson noted that October is National Planning Month and there will be related events and activities that will be announced at a later time.
- The next Hearing Officer public hearing will be held on Tuesday, October 6, 2015 at 5:00 PM with a study session scheduled for 4:30 PM.

With no further business, the public hearing adjourned at 6:35 PM.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Principal Planner
for Vanessa MacDonald, Hearing Officer
SA:dm